

# Exhibit U

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 IN RE: ) BK. NO: 11-30210-BJH-11  
5 )  
6 FRE REAL ESTATE, INC. )  
7 D E B T O R )

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12 TRANSCRIPT OF PROCEEDINGS

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20 BE IT REMEMBERD, that on the 17th day of February,  
21 2011, before the HONORABLE BARBARA J. HOUSER, United States  
22 Bankruptcy Judge at Dallas, Texas, the above styled and  
23 numbered cause came on for hearing, and the following  
24 constitutes the transcript of such proceedings as hereinafter  
25 set forth:

NATIONAL COURT REPORTERS (214) 651-8393

HC 00660

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1                   P R O C E E D I N G S

2                   THE COURT: All right. We've got continued  
3 hearings in FRE Real Estate on motions to dismiss or convert.  
4 I'll take appearances from the parties, please.

5                   MR. BUNCHER: Yes, Your Honor. Doug Buncher  
6 and Seymour Roberts for the debtor. And Mr. David Morgan and  
7 Greg Crown are here in the courtroom with us.

8                   THE COURT: Excellent.  
9 Good morning.

10                  MR. LENINGER: Good morning, Your Honor. John  
11 Leninger on behalf of Armed Forces Bank. And I have Doug  
12 Mead and Brent Parsons, representatives of the Bank with me.

13                  THE COURT: Excellent.

14                  MR. STROMBERG: Good morning, Your Honor.  
15 Mark Stromberg on behalf of State Bank of Texas.

16                  MS. HARTWICK: Good morning, Your Honor. Jo  
17 Hartwick on behalf of Petra.

18                  MR. WATSON: Good morning, Your Honor.  
19 Jermaine Watson on behalf of RMR Investments.

20                  MR. SAKONCHICK: Good morning, Your Honor.  
21 Steve Sakonchick for U.S. Bank, secured creditor, and Parkway  
22 North. And we were one of the foreclosing parties.

23                  THE COURT: Excellent.

24                  Mr. Kinvig.

25                  MR. KINVIG: Good morning, Your Honor.

1 Cameron Kinvig on behalf of American Bank of Commerce.

2 MR. STABER: Good morning, Your Honor. David  
3 Staber on behalf of Sidney Wicks, Trustee of the Sidney Wicks  
4 Revocable Trust.

5 MR. FRANKE: Good morning, Your Honor. Bob  
6 Franke on behalf of Regions Bank.

7 MR. OLSON: Good morning. Dennis Olson on  
8 behalf of First Bank & Trust and the Bank of Weatherford.

9 THE COURT: Mr. Weitman.

10 MR. WEITMAN: Good morning, Your Honor. David  
11 Weitman and Chris Brown with the law firm of K&L Gates here  
12 on behalf of Wells Fargo Capital Finance.

13 Your Honor, if we may just start with a couple of  
14 housekeeping matters that may simplify things.

15 THE COURT: Please.

16 MR. WEITMAN: When we were last here, I think  
17 that was about 45 degrees colder than it is today --

18 THE COURT: At least.

19 MR. WEITMAN: -- the Court asked about whether  
20 there were any charts. And I'm happy to report that we have  
21 some flow charts and other items that will assist the Court.

22 THE COURT: Excellent.

23 MR. WEITMAN: Mr. Brown will tell us, you  
24 know, what exhibits they would then be. And these are items,  
25 I might add, that we worked with Mr. Buncher to complete.

1 THE COURT: Excellent. I appreciate that. (

2 MR. WEITMAN: The first one, Your Honor,  
3 multi-colored, as it is, is the entity's ownership prior to  
4 December 27th. Because that's when -- the entity's ownership  
5 interest prior to December 27th when the stock got  
6 transferred, the stock ownership's interest in the  
7 transferror entities. And then we're also getting into right  
8 now, which entities owned what properties prior to December  
9 22nd. So that's reflected here, as Your Honor sees, with  
10 Transcontinental, if you will, with the various tracts of  
11 property; the affiliates, or subsidiaries of  
12 Transcontinental, and their respective properties; American  
13 Realty Trust. In the middle, Your Honor, Income Opportunity (

14 Realty Investors, AEC; in parenthesis in each instance the  
15 name of the property. Then on the next page of this exhibit  
16 Your Honor will see how things changed after December, as of  
17 December 23 with who owns what properties.

18 If Your Honor looks further over -- oh, by the way,  
19 Your Honor, forgive me. If Your Honor looks far on the  
20 right, what happens here is you've got ABC LD income that  
21 then owns all of those transferor entities. And then you see  
22 which entities have assets. And by in large, they don't. We  
23 put that in parenthesis. And then, Your Honor, a little bit  
24 to the left, ABC LD then owns FRE Real Estate and now FRE  
25 Real Estate owns all of these tracts of land that Your Honor (

1 heard a lot about. And then you see, Your Honor, who has the  
2 seller notes. And that is reflected in parenthesis, holder  
3 of seller notes, Transcontinental to Realty Investors, Income  
4 Opportunity Realty Investors, and American Realty Trust.  
5 Those public entities that we spoke of.

6 THE COURT: All right.

7 MR. WEITMAN: Your Honor, another chart --

8 THE COURT: Thank you.

9 MR. WEITMAN: -- to assist the Court. And  
10 this is blue and yellow showing each of the transferor  
11 entities into FRE Real Estate. So if Your Honor looks,  
12 there's a transfer of TCI Land Portfolio to FRE Real Estate  
13 receives that property and then issues the seller note and  
14 then assume various trade debt, tax debt, and maybe a tax  
15 loan. That would be the Propel that Your Honor heard about.  
16 And assumes mortgage debt. And this is -- this shows  
17 essentially the 20 entity transfers, although I think there  
18 may be 23 different seller notes that are generated.

19 THE COURT: All right.

20 This is exceedingly helpful. Thank you.

21 MR. WEITMAN: Great.

22 When we were here last time, Your Honor, we had a list,  
23 what we'll call the list of transferor entities and other  
24 information. It was a chart. And we revised it since then  
25 with Mr. Buncher and Mr. Crown giving us additional



1 information.

2 If I may approach?

3 THE COURT: You may.

4 Thank you.

5 MR. WEITMAN: Here we followed the same chart  
6 that Your Honor just looked at in terms of the name of the  
7 transferor. Then there was a name change. Name of the  
8 transferee. The amount of the seller note. And we also  
9 wanted to try to find out the amount of the unsecured debt.  
10 We wanted to clarify what we said earlier. Some numbers  
11 changed. Not a great amount, but they did change.

12 In addition, Your Honor, although the seller notes are  
13 in the middle here, the amount of the seller notes, they were  
14 then adjusted because they had to do a calculation under  
15 those purchase agreements. So Your Honor may see this  
16 difference, if you will, from the last chart that shows how  
17 much mortgage debt was secured, or how much the seller note  
18 was. They got it more refined in the blue and yellow. And  
19 these may be just the note amounts that were issued.

20 MR. BROWN: Your Honor, if I may, those  
21 exhibits would be Wells Fargo 191, 192, and 193.

22 THE COURT: In order?

23 MR. BROWN: In the order that he introduced  
24 them, yes.

25 THE COURT: Excellent.

1 MR. WEITMAN: Your Honor received a notebook,  
2 or actually many notebooks last time and it included what was  
3 going to be Exhibits 1 and 2 of the officers, directors and  
4 members of those relevant entities. And we worked again with  
5 Mr. Buncher. So the Court can see these. They have been  
6 admitted. Excuse me. We would ask now that they be  
7 admitted. If I may just hand them up to the Court.

8 THE COURT: Please.

9 MR. WEITMAN: That would be Wells Fargo 1 and  
10 Wells Fargo 2. It shows where things stood in terms of the  
11 entities just prior to the transfers. Who were the officers,  
12 directors, and members. As the Court may recall, all of the  
13 ownership interest in the transferor entities went up to ABC  
14 LD Income.

15 THE COURT: Yes.

16 MR. WEITMAN: And then it changed. The  
17 officers and directors and members changed when it was  
18 acquired by ABC LD Income. So it shows as of January 4th who  
19 the new players are.

20 THE COURT: All right.

21 And are there changes? Because looking down this list  
22 initially, it looks like they're the same.

23 MR. WEITMAN: There is a 1 and a 2. There's  
24 one as of December 23.

25 THE COURT: Right. But the people look the

1 same.

2 MR. WEITMAN: Oh, I'm sorry, Your Honor.

3 That's because you're looking at the parent entities, in some  
4 instances. But as you get in deeper to look at the  
5 subsidiaries, you'll see it.

6 THE COURT: All right.

7 MR. WEITMAN: We want to get every entity  
8 that's on the chart essentially.

9 THE COURT: Excellent.

10 MR. WEITMAN: Your Honor, yesterday afternoon  
11 we were able to reach agreement among the lenders and the  
12 debtor as to the joint stipulation summarizing all of the  
13 documents. We filed that with the Court. We have a courtesy  
14 copy for the Court possibly to help going through this  
15 hearing.

16 THE COURT: The stipulation?

17 MR. WEITMAN: Yes, Your Honor.

18 THE COURT: I think I have a copy of it.

19 This is what was filed at 2:07 yesterday?

20 MR. WEITMAN: Yes, Your Honor.

21 THE COURT: All right. Yes, I've seen that.

22 MR. WEITMAN: In addition, Your Honor, the  
23 Court may recall that there were various appraisals that were  
24 introduced into evidence by Mr. Buncher toward the end of the  
25 hearing. Wells Fargo thereafter conditioned more appraisal

1 or updated appraisals. And these are also referenced in the  
2 joint stipulation. We came up with an aggregate valuation  
3 for our collateral as of the petition date with an amount of  
4 \$8.8 million. And, again, that's referenced in the joint  
5 stipulation. If I may hand up to the Court these appraisals.

6 Mr. Brown, what are they listed at number wise in our  
7 joint stipulation?

8 MR. BROWN: You've got my copy of it.

9 MR. WEITMAN: Oh, sorry.

10 May I hand these up to the Court?

11 THE COURT: Yes.

12 MR. WEITMAN: Thank you.

13 THE COURT: Thank you.

14 And are these exhibits, as well?

15 MR. WEITMAN: Yes.

16 MR. BROWN: Those would be 194 through 196.

17 MR. WEITMAN: Your Honor, those are really the  
18 initial housekeeping matters. I think where we left things  
19 at the close of the last hearing was that I would be able  
20 together with the other moving parties proceed with  
21 cross-examination, or redirect, pardon me, of Mr. Morgan.  
22 In discussions with Mr. Buncher this morning, he indicated  
23 that he had some addition topics to cover with Mr. Morgan.  
24 And I have no objection to him continuing. his  
25 cross-examination after which the moving parties will then be

1 able to essentially cross not only on what he said on the  
2 3rd, but also the new testimony.

3 MR. BUNCHER: We'd ask that Mr. Morgan retake  
4 the stand, Your Honor.

5 THE COURT: Mr. Morgan, if you'd come forward.  
6 I'm simply going to remind you that you're still under oath.  
7 Thank you.

8 MR. BUNCHER: And just for the record, Your  
9 Honor, we'd like Exhibits 1 and 2 that they just referenced,  
10 and Exhibits 191, 192, 193, and 194 through 196 to be  
11 admitted, please.

12 THE COURT: Any objection?

13 Those exhibits are admitted.

14 RICHARD MORGAN

15 the witness, having been previously sworn to tell the truth,  
16 testified on his oath as follows:

17 DIRECT EXAMINATION

18 BY MR. BUNCHER:

19 Q. Good morning, Mr. Morgan.

20 A. Good morning.

21 Q. You recall you're still under oath?

22 A. Yes.

23 Q. Just a few follow-up questions. You were  
24 questioned at the last hearing about whether or not you had  
25 any commitments for funding for this bankruptcy case.

1 Do you recall those questions?

2 A. Yes.

3 Q. Has the state of the world changed in that regard  
4 since the last hearing?

5 A. Yes.

6 Q. And could you please explain to the Court how it's  
7 changed?

8 A. I did an analysis of what would, I call it carrying  
9 cost. Essentially not interest carrying cost, but the cost  
10 of the maintenance, of the taxes, and whatever ancillary or  
11 other type expenses that are incurred with the properties and  
12 came up with a budget. And we have submitted a commitment  
13 letter from TCIF today for 400,000 in DIP funding, which in  
14 my estimation is about four months worth of carry on the land  
15 for interest, taxes -- not interest, taxes and maintenance on  
16 the properties. Which will give me time to get from this  
17 point up to the plan filing and confirmation.

18 Q. All right. Just so the Court is clear on what you  
19 have here. The commitment is for what \$400,000. And that  
20 amount approximates what?

21 A. Approximately four -- a little over four months of  
22 cost to carry the maintenance on an annual basis the taxes  
23 and insurance. Some cases have water on one. There's some  
24 payments on one of the properties which have some kind of  
25 deal or program where we have to -- you know, it's part of

1 one group. All of the related expenses I could find,  
2 insurance included. Basically all of the costs of carrying  
3 the property, except for the interest on the land, raw land  
4 properties.

5 Q. And what you're talking about as far as the  
6 insurance and the taxes and the maintenance, are you speaking  
7 of just the raw land properties, or are you speaking of the  
8 income producing properties, or both?

9 A. Just the raw land properties at this point in time.

10 Q. All right. As far as the income producing  
11 properties, do those properties produce enough cash to pay  
12 their own expenses?

13 A. Yes.

14 Q. And it's built into the budgets we've submitted to  
15 the Court on the income producing properties, is there also  
16 sufficient cash where you're escrowing taxes already for 2011  
17 on those properties?

18 A. That is correct.

19 Q. And with this \$400,000 commitment, you say that the  
20 debtor will be able to escrow for 2011 monthly taxes for a  
21 four-month period?

22 A. Yes.

23 Q. As well as covering the maintenance expenses on the  
24 raw land properties?

25 A. Yes.

1 Q. Is it the intention to go back to January 1 of this  
2 year to escrow the taxes for January and then February,  
3 March, et cetera?

4 A. Yes.

5 Q. All right. So essentially will the -- the 400,000  
6 would get you through to approximately April 30th of this  
7 year?

8 A. Yes.

9 Q. And would it be your intention between now and  
10 April 30th to get a plan on file in this case?

11 A. As soon as we get this hearing over, I'm ready to  
12 work on a plan.

13 MR. BUNCHE: All right. May I approach, Your  
14 Honor?

15 THE COURT: You may.

16 MR. BUNCHE: I've got a couple of books here.

17 THE COURT: Are these different than what I  
18 already have?

19 MR. BUNCHE: Yes, Your Honor. The binder,  
20 Your Honor, that I just handed the Court are starting with  
21 Exhibit P-14. The last hearing we entered already P-1  
22 through 13. So the first book you have is Exhibit P-14  
23 through P-19. Those are additional appraisals that have been  
24 produced by the lenders in this case that have been sent to  
25 Mr. Morgan for --



1 Q. Mr. Morgan, have you reviewed those appraisals that  
2 the lenders have produced?

3 A. Yes.

4 Q. And does Exhibit P-14 to 19, that book in front of  
5 you, contain more of the appraisals that the lenders  
6 produced?

7 A. Yes.

8 MR. BUNCHER: Your Honor, we would move to  
9 admit P-14 to 19.

10 THE COURT: Any objection?

11 Hearing none, it's admitted.

12 Q. All right. Moving on to the second book.

13 What are the exhibits in that book, Mr. Morgan? On the  
14 cover it lists what the -- look at the cover of the binder.

15 A. I see it.

16 Q. What does it say the exhibit numbers are?

17 A. P-20 through Q.

18 Q. P-20 through Q.

19 Looking at P-20 through P-28, are those more appraisals  
20 that the lenders have produced in this matter that you have  
21 reviewed?

22 A. Yes.

23 MR. BUNCHER: Your Honor, we'd move to admit  
24 P-20 to 28.

25 THE COURT: Any objection?

1 MR. WEITMAN: None, Your Honor.

2 THE COURT: They're admitted.

3 Q. Turn now if you could, Mr. Morgan, to Tab P-29.

4 And let's look at that.

5 THE COURT: There is no 29 that I'm -- in  
6 these two books.

7 MR. BUNCHE: I'm sorry. It's P-28, Your  
8 Honor.

9 THE COURT: All right.

10 Q. What is Exhibit P-28, Mr. Morgan?

11 A. This is my summary of the appraisals. And this was  
12 done and has not been updated since the Wells Fargo new  
13 appraisal was done.

14 Q. So that summary that's Exhibit P-28 is a document  
15 that you prepared that summarizes the numbers in the  
16 appraisals that are already admitted from P-1 through P-27;  
17 is that true?

18 A. Yes. With the exception of the Wells Fargo  
19 appraisal.

20 Q. You're saying that the new appraisal that Wells  
21 Fargo just introduced here today for the 8.8 million is not  
22 reflected in the summary?

23 A. That's correct.

24 Q. But other than that, you've reflected all of the  
25 other P exhibits in that summary; is that correct?

1 A. That's correct.

2 Q. And on the summary did you also compare the  
3 appraised -- the value numbers in each of the appraisals with  
4 the debt on those properties?

5 A. Yes.

6 Q. And explain to the Court what that shows.

7 A. It shows a varying between 100 and -- I'm talking  
8 in percentage coverage -- between 135 -- 134 up to about 158  
9 percent coverage.

10 MR. BUNCHER: Your Honor, we'd move to admit  
11 P-28. I think it was already admitted it.

12 THE COURT: I think I just admitted it. I  
13 think it's been admitted.

14 MR. BUNCHER: All right.

15 Q. Even --

16 MR. WEITMAN: Pardon me, Your Honor. Just a  
17 clarification. And with just the clarification that it does  
18 not include the revised numbers submitted by Wells Fargo in  
19 its appraisals. And if this is equity and coverage, it  
20 obviously doesn't cover the ad valorem taxes for 2009, 2010,  
21 or 2011, which attached on the first day of the year. So  
22 with that, I have no objection.

23 THE COURT: Mr. Leninger.

24 MR. LENINGER: Your Honor, I'm going to  
25 reserve the right to question the witness about the debt

1 calculation for Armed Forces Bank.

2 THE COURT: All right.

3 MR. LENINGER: I don't agree to that number.

4 THE COURT: All right.

5 Q. Where did you get the debt numbers that are on the  
6 exhibit, Mr. Morgan?

7 A. I got the debt numbers off of the transfer  
8 documents when the transaction was done.

9 Q. You heard the testimony or the presentation by  
10 Mr. Weitman regarding the new Wells Fargo appraisal at 8.8  
11 million today, correct?

12 A. Yes.

13 Q. How does that appraisal compare to the Wells Fargo  
14 debt?

15 A. It's still -- it's very slightly over that. I'm  
16 showing 8.5 million. They're showing 8.8 million. So it's  
17 some coverage, but not much.

18 Q. All right. But still over secured?

19 A. Yes.

20 Q. All right. Turn to Exhibit Q, please. It's in the  
21 same binder.

22 What is Exhibit Q?

23 A. Exhibit Q is the commitment letter for the DIP  
24 funding that I obtained yesterday.

25 Q. All right. And are there still some details to

1 work out with regard to the interest rate, payment terms, et  
2 cetera?

3 A. Yes.

4 Q. And -- but is it your intention to work those  
5 details out and present a motion to the Court to approve that  
6 DIP funding as soon as practicable?

7 A. Yes.

8 MR. BUNCHER: Move to admit Exhibit Q, Your  
9 Honor.

10 THE COURT: Any objection?

11 MR. KINVIG: Your Honor, I object. And I'll  
12 move a little bit closer to the microphone.

13 THE COURT: Appreciate that. Thank you.

14 MR. KINVIG: Your Honor, while Mr. Morgan has  
15 already presented some testimony about a DIP commitment, I  
16 think that this DIP commitment letter is essentially hearsay.  
17 It's really an out-of-court statement by Transcontinental  
18 saying what it may or may not do. But there's nobody here  
19 from Transcontinental to authenticate it. I don't object to  
20 it being admitted for the very limited purpose of Mr. Morgan  
21 saying, I received this letter. But I don't think that it  
22 can be admitted without a Transcontinental representative  
23 authenticating it for the truth of what's contained within  
24 it.

25 THE COURT: Response?

1 MR. BUNCHE: Yes, Your Honor.

2 This is an operative agreement. It's not an  
3 out-of-court statement any more than a contract would be an  
4 out-of-court statement. So I disagree that it's inadmissible  
5 and I would ask the Court to admit it.

6 THE COURT: I'll sustain the objection. It's  
7 hearsay.

8 MR. LENINGER: Thank you, Your Honor.

9 Q. All right. Mr. Morgan, do you believe you have a  
10 commitment to \$400,000 of debtor in possession financing from  
11 Transcontinental Realty?

12 A. I know I have a commitment.

13 Q. All right. And how do you know that?

14 A. Because I met personally with Mr. Moos and the  
15 Transcontinental people. It was -- and their counsel. This  
16 was an item that was discussed and approved by the board  
17 yesterday. So it was specific board resolution -- not  
18 resolution. But a specific board meeting to discuss this  
19 matter and was told it was approved.

20 Q. All right. And whose signature appears for TCI on  
21 the agreement?

22 A. Stephen Shelley.

23 Q. And did you also sign the agreement?

24 A. Yes.

25 MR. BUNCHE: I'd move again to admit the

1 exhibit, Your Honor.

2 MR. LENINGER: Your Honor, the exact same  
3 objection.

4 THE COURT: The exact same ruling.

5 MR. BUNCHER: Thank you, Your Honor.  
6 Couldn't hurt to try.

7 THE COURT: I agree.

8 MR. BUNCHER: May I approach with another  
9 exhibit?

10 THE COURT: You may.

11 Thank you.

12 MR. BUNCHER: I'm handing the Court what I've  
13 marked as Exhibit R.

14 Q. Mr. Morgan, what is Exhibit R?

15 A. This is a contract for purchase and sale of the  
16 property, one of the ABC properties.

17 Q. Is this the contract that was discussed in the last  
18 hearing relating to the land in Temple that's subject to a  
19 lien of American Bank of Commerce?

20 A. Yes.

21 Q. All right. And do you recognize Mr. Shelley's  
22 signature as vice president of Prime Income Asset Management,  
23 Inc., on the last page?

24 A. Mine doesn't have a signature on it.

25 Q. Last page.

1 A. Oh, I'm sorry.

2 Q. There's one more page.

3 A. Yes.

4 Q. All right. And the purchase price under this  
5 contract for that Temple land was what?

6 A. 525,000.

7 Q. 525,000?

8 A. I believe so. Let me just check and be sure. I'm  
9 going from memory.

10 Q. First page, paragraph 2.

11 A. 525,000.

12 Q. All right. Now, this contract is rather old. It's  
13 in December of 2008.

14 MR. STABER: Your Honor, I'd like to lodge an  
15 objection to this. He's asking to testify regarding the  
16 terms of the contract. He hasn't offered it for admission.  
17 And I will have an objection or two to the admission of it.  
18 And prior to further questions, I would like to have that  
19 considered.

20 THE COURT: Sustained.

21 MR. BUNCHER: Fair enough.

22 I'll move to admit Exhibit R.

23 MR. STABER: If I may, Your Honor. David  
24 Staber on behalf of Sidney Wicks.

25 Your Honor, I have a three-fold objection to Exhibit R.



1 One, it was served on us this morning. It was untimely and  
2 it was obviously with the date on it in existence prior to  
3 the commencement of the first hearing. Objection number 2 is  
4 lack of proper authentication and completeness. And I'm  
5 combining two there. But it's important. The actual  
6 contract itself has no signature page, or the copy I have has  
7 no signature page on the contract. No legal description  
8 attached to it.

9 The First Amendment is unsigned. It is only the last  
10 page, the Second Amendment that has any signatures on it.  
11 And this witness I do not believe is an employee of either of  
12 the contracting entities. So I don't think this one can be  
13 authenticated. It's incomplete and should not be admitted on  
14 that ground. Your Honor, and frankly there may even be a  
15 question -- since it's not even a debtor entity to a party to  
16 this, if it has any relevance to this hearing.

17 So I think I have about four grounds, Your Honor.

18 Thank you.

19 THE COURT: Thank you.

20 MR. KINVIG: Your Honor, I have an additional  
21 objection and kind of a point of clarification.

22 To the extent that this Court overrules those  
23 objections, and I would reiterate those objections as my own.  
24 But also last time I spoke with Mr. Morgan at I believe the  
25 341 Meeting, he stated to me off the record that this

1 contract that they're seeking to admit was probably going to  
2 be scrapped and a new contract would be put forward in its  
3 place. So, you know, I come to the Court this morning not  
4 even knowing whether this is the current contract, whether --  
5 this contract was dated in 2008. So it is certainly a fairly  
6 aged contract. I don't know if it's the current contract.  
7 If it has been, you know, relevant for any period of time or  
8 not, if there's other contracts floating around out there.  
9 So I think that goes to lack of authentication. But it does  
10 provide a little bit of color to that argument.

11 THE COURT: Response?

12 MR. BUNCHEER: I was only talking about this  
13 exhibit so I could lay a foundation to then move on and ask  
14 the witness about what other discussions he's had with this  
15 purchaser since he's been involved.

16 THE COURT: Well, but respond to the  
17 objections.

18 MR. BUNCHEER: He's proved up the contract. It  
19 is what it is.

20 THE COURT: The objections are sustained.  
21 This witness does not have personal knowledge. There's been  
22 no one here to authenticate this exhibit. Moreover, it's an  
23 unsigned copy, at least in large part.

24 MR. BUNCHEER: All right.

25 Q. When did you learn about a potential offer on the

1 property in Temple.

2 A. I don't know the exact date, but it was after the  
3 last hearing we had.

4 Q. Okay. And what did you learn about a potential  
5 purchase offer on the Temple property?

6 A. The purchaser was very surprised because he thought  
7 he still had a contract and was not aware of the transfer  
8 from Prime to TCI and then to FRE. And going through the  
9 contract, quite candidly, when I mentioned to Mr. Kinvig, the  
10 contract itself needs to be redone. Because there were so  
11 many -- it was done at a time when it was for what you call a  
12 tax credit facility, which takes a long time to get approved.  
13 He now has his funding and is ready to move forward. So I  
14 have marked up a contract for him to resubmit to the Court.  
15 Short time frames and all of the outs taken out of the title,  
16 although there's stuff taken out so we can have a firm  
17 contract for closing.

18 Q. All right. So who is this purchaser?

19 A. The purchaser is a young man named Clifton  
20 Phillips, who happens to be the younger son of Gene Phillips.  
21 But he has a separate company called Round Stone. And his  
22 job then is to -- his company basically develops tax credit  
23 apartments. And but it is with Clifton Phillips, who is the  
24 younger son of Gene Phillips.

25 Q. All right. But based upon your discussions

1 recently with Mr. Phillips, is it your testimony that the  
2 purchaser is serious about moving forward with the purchaser  
3 of the property?

4 A. Well, he has funding for it so, yes, he's very  
5 serious.

6 Q. All right.

7 A. But the real issue is, I've got a -- I marked up  
8 the contract for him taking out all the outs. Hopefully by  
9 tomorrow we'll have that done and resubmitted so it will be a  
10 contract that can be valid.

11 Q. Is the purchase price going to stay at 525,000?

12 A. Yes.

13 Q. All right. At the last hearing there was some -- I  
14 asked you some questions about how these properties that are  
15 collateral for different lenders inter-relate with one  
16 another; do you recall that?

17 A. I do.

18 Q. And did you provide to me this morning an aerial  
19 photograph of the Mercer Crossing land up near LBJ and 6 --  
20 excuse me, LBJ and 35?

21 A. I did.

22 MR. BUNCHER: For demonstrative purposes --  
23 I've only got one copy. But if I could hand this to the  
24 Court?

25 THE COURT: Thank you.

1 Q. There are a number of colored dots on that picture  
2 or on the aerial photograph.

3 What do those dots represent?

4 A. They basically represents the property location in  
5 and around Mercer. You remember, part of my testimony was  
6 that part of the marketing plan of the property is to have  
7 some kind of a collaboration between lenders and not have  
8 Party A having one broker right next door to Party B who has  
9 a listing on a different property. That is a demonstration  
10 of the locations of the various collaterals. Wells Fargo,  
11 for example, has, I believe, five properties that are  
12 involved in Mercer. Armed Forces has one big piece which is  
13 all notated with hard dots. RMR has two pieces. And it just  
14 shows the location of those pieces. And I believe Aegis  
15 Capital has one piece. All of the properties relate, as far  
16 as the aerial is concerned and how they relate to each other.

17 Q. So even when these properties were in separate  
18 entities prior to the transfer to this debtor, were the  
19 properties and these lenders nonetheless inter-related  
20 somewhat with one another?

21 A. Well, the properties are inter-related in the sense  
22 that they came from the same owning entity and were financed  
23 by owning entities, or related owning entities. As to the  
24 lending, the only relations there are, and I think I  
25 mentioned it, but there are a couple of pieces that the Payne

1 North Track, which I believe is -- I forget which one it is.  
2 But Payne North Track is one of the lenders. And then I  
3 believe Aegis Capital controls .65 acres that would be a good  
4 entry to that. And the -- I did not mark on there, but  
5 NextBank has their piece of land, which is additional  
6 collateral, that's directly adjacent to the west of the  
7 building, one of the buildings that's shown on there. And I  
8 think that's about it. Those are two of the main things I  
9 wanted -- oh, and not shown on there is Bridgewood Ranch, I  
10 believe is -- the land is by Aegis and the property complex  
11 is financed by ABC.

12 Q. All right. Just so we're clear, you mentioned --  
13 in that answer you mentioned the NextBank property. Which  
14 NextBank property were you referring to that's adjacent to  
15 this Mercer Crossing Land?

16 A. They have a 6.6 acre piece that is additional  
17 collateral for the Fenton loan.

18 Q. And where is the Fenton Building in relation to  
19 that aerial map there?

20 A. I'd have to pinpoint it. I could mark it on a map  
21 right quick for you.

22 MR. BUNCHER: May I show the witness the  
23 exhibit?

24 THE COURT: Of course.

25 Thank you.

1 A. If there's a heavier pen, I can mark all of it for  
2 you, if you'd like.

3 Q. Here you go. If you could just put a circle  
4 wherever the --

5 A. This is NextBank here.

6 Q. And then the -- this is Fenton here.

7 Okay. You -- you drew a circle. That's the NextBank  
8 raw land property?

9 A. Right.

10 Q. And is that cross-collateralized with the Fenton  
11 Center Building?

12 A. Yes.

13 Q. And you wrote the word Fenton and drew a line  
14 pointing to the Fenton Center Building?

15 A. Yes.

16 MR. BUNCHER: I'll had this back to the Court.

17 THE COURT: Thank you.

18 MR. BUNCHER: It's a little faint, Your Honor.

19 THE COURT: I see it.

20 Q. So in your view is there benefit to the lenders to  
21 have a unified plan and a marketing strategy with respect to  
22 these properties that are shown on this exhibit?

23 MR. WEITMAN: Objection; leading.

24 THE COURT: Sustained.

25 Q. What benefit, if any, do you find that -- in having

1 all these properties in a single bankruptcy case?

2 A. The only thing that I mentioned --

3 MR. WEITMAN: Your Honor, the same objection.

4 THE COURT: Overruled.

5 A. The only thing I mentioned previously is that --

6 and that's all I was doing really is preparing this as a --

7 as a discussion tool with the various lenders. And a

8 decision needs to be made between the various lenders of the

9 parcels, if we're going to put the properties up for market,

10 how do we do that? And do we do it by having one concentric

11 market firm that handles all of it, or do they want to go and

12 have individual brokers handle their own parcels? My

13 recommendation would be that we have somebody that works it

14 altogether. But that's strictly up to the lenders once we

15 get to that point.

16 MR. BUNCHER: All right. I think we're done

17 with that. My intention was to use that as a demonstrative

18 aid. However, given the witness' testimony, I would move to

19 admit the exhibit as Exhibit S, Debtor Exhibit S.

20 THE COURT: Any objection? Do you all want to

21 see this?

22 MR. STABER: I would at least like to see it

23 before it's in there.

24 THE COURT: That makes sense.

25 MR. BUNCHER: And just for the Court, Your



1 Honor, I understand this was just given to me this morning,  
2 but we've also been working around the clock since the last  
3 hearing on these stipulations and other exhibits that  
4 Mr. Weitman has introduced that I've not objected to on any  
5 kind of timeliness grounds. So I'd ask the Court to take  
6 that into consideration on this.

7 MR. WEITMAN: Your Honor, with respect to the  
8 timing of it, it took maybe ten drafts in order to get  
9 Mr. Buncher to agree to finalize it. So it was delayed  
10 because of working with Mr. Buncher. That's the point on why  
11 things were just handed up to the Court.

12 Your Honor, I don't know that the debtor's chief  
13 restructuring officer can really authenticate this. But I  
14 mean, it is what it is.

15 THE COURT: So the question is, is there an  
16 objection?

17 MR. WEITMAN: No, Your Honor.

18 THE COURT: All right. Debtor Exhibit S is  
19 admitted.

20 MR. BUNCHER: Thank you.

21 THE COURT: Thank you.

22 MR. BUNCHER: One minute, Your Honor. I need  
23 to grab a different book.

24 THE COURT: No problem. Thank you.

25 MR. BUNCHER: I think we're back to the book,

1 the original book of the debtor's exhibits that are A through  
2 O.

3 THE COURT: All right.

4 What exhibit are we looking at?

5 MR. BUNCHER: I'm going to show the witness  
6 what's been marked as Exhibit M.

7 Q. Mr. Morgan, do you recall some questioning at the  
8 last hearing about whether or not the transfers were  
9 authorized or not and whether some party could possibly  
10 assert a fraudulent conveyance claim against the debtor; do  
11 you recall that?

12 A. I do.

13 Q. And I know you did not look at all of the  
14 transaction documents. You've testified to that. But did  
15 you look at a representative sampling of the documents to see  
16 what documents -- what types of documents were signed in  
17 connection with the purchase and sale agreement?

18 A. I did.

19 Q. And is Exhibit M a resolution of the -- resolution  
20 of TCI Texas Properties, LLC, which is the transferor of the  
21 Wells Fargo collateral that was signed in connection with  
22 that transaction?

23 A. Yes.

24 Q. And did you -- did you skim through and look at the  
25 transaction documents signed in connection with the Wells

1 Fargo transaction?

2 A. I did. You know, I apologize to the Court. I  
3 should have known about -- as much real estate experience as  
4 I have, I should have know that every contract has a  
5 representation that has the authority to do it. But I did go  
6 back through the particular transaction you're talking about.  
7 And it seems that, at least what I saw, all of the certifies  
8 resolutions for the seller were in place.

9 Q. Okay.

10 MR. BUNCHER: I would move to admit Exhibit M.

11 THE COURT: Any objection to M?

12 MR. WEITMAN: None, Your Honor.

13 THE COURT: It's admitted.

14 Q. And does this indicate -- does Exhibit M indicate  
15 to you that the transferor, at least in the case that of the  
16 Wells Fargo collateral authorized the transaction?

17 A. Yes.

18 Q. I'm sorry?

19 A. Yes.

20 Q. If you also turn over to Exhibit M -- excuse me, N,  
21 as in Nancy.

22 Is that a resolution of the debtor, Fenton Real Estate,  
23 Inc. that was also done connection with the transaction  
24 transferring the Wells Fargo collateral?

25 A. Yes.

1 MR. BUNCHE: Move to admit Exhibit N, Your  
2 Honor.

3 THE COURT: Any objection to N?

4 MR. WEITMAN: No objection, Your Honor.

5 THE COURT: It's admitted.

6 Q. Although the properties -- many of these properties  
7 that are now owned by the debtor were in separate entities  
8 that transferred the properties to the debtor, were all of  
9 those entities that transferred the property subsidiaries of  
10 either Transcontinental, American Realty, or Income  
11 Opportunity?

12 A. In some form, yes.

13 Q. All right. So indirectly the properties were all  
14 owned by common owners, even before they were transferred?

15 A. Yes.

16 MR. BUNCHE: Your Honor, I'll pass the  
17 witness.

18 THE COURT: Very well.

19 Mr. Weitman.

20 CROSS-EXAMINATION

21 BY MR. WEITMAN:

22 Q. Mr. Morgan, do you consider yourself an expert in  
23 the purchase and sale of real estate?

24 A. Yes.

25 Q. And how many years have you been doing this?

1 A. 35 years.

2 Q. Did you not mention to the Court last time we were  
3 here that you had filed for personal bankruptcy in 2005?

4 MR. BUNCHER: Objection; relevance, Your  
5 Honor.

6 MR. WEITMAN: Your Honor, it has ot go with  
7 his credibility and his expertise as a chief restructuring  
8 officer and whether he really is an expert.

9 MR. BUNCHER: The fact -- if Mr. Morgan had  
10 personal financial problems, that doesn't have anything to do  
11 with this case, Your Honor.

12 MR. WEITMAN: Your Honor, may I have just a  
13 little bit of latitude? It was all on real estate projects.

14 THE COURT: I'll allow it, briefly.

15 Q. In fact, weren't -- didn't you invest through  
16 various entities in real estate shopping centers?

17 A. Yes.

18 Q. I'm sorry, I can't hear you. Yes?

19 A. Yes.

20 Q. And as a result of foreclosures or other returns of  
21 collateral, did you not leave various secured creditors  
22 holding \$30 million worth of deficiency claims?

23 MR. BUNCHER: Your Honor, I'm going to object  
24 if we're going to start basically trying issues in his --  
25 that were resolved in his personal bankruptcy case. If the

1 Court -- if he wants the Court to take notice of his  
2 bankruptcy case, there's filings and there's disputes and  
3 there were appeals of those disputes. And so I object to  
4 this line of questioning, other than the fact that he did  
5 file bankruptcy and the record speaks for itself with  
6 whatever happened and the issues involved in that case.

7 THE COURT: Overruled. I'm going to allow it  
8 briefly.

9 Q. Is that not true that you left \$30 million worth of  
10 deficiency claims owing to secured creditors?

11 A. It is not true.

12 Q. Are you not aware of two various opinions from both  
13 Judge Jernigan and also, I think it was Judge Kincade,  
14 dealing with issues of discharge and your bankruptcy  
15 proceedings?

16 A. I'm aware that in both cases the bankruptcy was  
17 rewarded.

18 THE COURT: The bankruptcy was, I'm sorry?

19 THE WITNESS: The bankruptcy was, I guess in  
20 other words, confirmed.

21 MR. WEITMAN: Your Honor, just to clarify. He  
22 did get a discharge in bankruptcy. But there are decisions  
23 where essentially --

24 THE COURT: This is questioning of the  
25 witness. You can make argument later.

1 Q. In fact, weren't there questions that were raised  
2 as to whether or not you personally were involved in  
3 fraudulent conveyances which would result in you getting --  
4 not getting a discharge?

5 MR. BUNCHER: Same objection. This is  
6 irrelevant. It's under 403, the probative value  
7 substantially outweighed by prejudicial value. And we're  
8 getting into issues that were tried in courts other than this  
9 court. And I think it's just unfair and inappropriate.

10 MR. WEITMAN: Your Honor, he claimed to be a  
11 witness. He's a chief restructuring expert. And he made a  
12 shambles of his own personal investments.

13 THE COURT: I'm going to allow it. I think it  
14 is relevant, at least to a point.

15 MR. WEITMAN: Your Honor, may I hand up to the  
16 Court a copy of the West Law decision?

17 THE COURT: You may.

18 MR. WEITMAN: Thank you.

19 Q. Do you recall there being allegations that you had  
20 engaged in fraudulent conveyances?

21 A. I do. And I also recall that this case was tried  
22 three times through the Appellate Courts and each case was  
23 affirmed that there was not fraudulent conveyances.

24 Q. Do you recall that the Court found that that was  
25 not an intent to hinder and delay or defraud creditors, but

1 that there were -- there was, in fact, strong evidence of  
2 constructive fraudulent conveyances?

3 THE COURT: I can read the opinion. It speaks  
4 for itself.

5 Q. Do you recall your testimony on February 3 when you  
6 explained that you had no problem with these seller notes  
7 that were issued by FRE to the transfer entities?

8 A. I do.

9 Q. And was it your -- is it now your testimony that  
10 those looked like valid transactions to you?

11 A. I'm sorry, you asked me -- you're going to have to  
12 explain valid.

13 Q. That those were appropriate transactions to be  
14 entered into by the transferor and FRE.

15 A. Yes.

16 Q. And is it still your testimony that the acquisition  
17 of the stock ownership interest in each of the transferor  
18 entities was appropriate?

19 A. I told you, I have no knowledge of that.

20 Q. But is it your testimony that those were  
21 appropriate transactions?

22 A. I can't testify as to whether it's appropriate or  
23 not. I have no knowledge of it.

24 Q. Well, if you were to continue as a debtor in  
25 possession, as a chief restructuring officer of the debtor in



1 possession, would you investigate those transactions further,  
2 or would you assume that they were they were appropriate  
3 since they were authorized by various boards?

4 A. The debtor, for which I'm in charge, does not own  
5 those entities that you're talking about. It's owned by a  
6 parent company.

7 Q. Would you take a look at the debtor's book, if you  
8 will, their exhibits, and Schedule F, if you have that?

9 THE COURT: Debtor Exhibit F?

10 MR. WEITMAN: Yes. It's page 17 of 17. This  
11 is, again, dealing with the unsecured buyer notes payable.

12 THE COURT: I'm not sure where you're looking,  
13 Mr. Weitman.

14 MR. WEITMAN: In Mr. Buncher's notebook.

15 THE COURT: I've got Exhibit F.

16 MR. WEITMAN: And then there is a 30 pager of  
17 the creditors holding unsecured, non-priority claims. And  
18 then just before G, there is this Schedule F, unsecured buyer  
19 notes payable.

20 THE COURT: So Exhibit F, Schedule F?

21 MR. WEITMAN: Yes, Your Honor. If I may just  
22 show Your Honor -- it's at the very end just before G.

23 MR. BUNCHER: And just for the record, the  
24 schedules of the debtor were actually admitted as Armed  
25 Forces Exhibit 4 at the last hearing, Your Honor.

1 THE COURT: Thank you, Mr. Buncher.

2 All right. I've got it.

3 A. Yes.

4 Q. Now, we discussed that footnote 4 before, didn't  
5 we?

6 A. Yes.

7 Q. And is it not your testimony that in each case  
8 the -- if a property is sold, then the administrative -- then  
9 the tax, ad valorem tax and then the secured d debt would be  
10 satisfied before the seller note would get paid?

11 A. Yes.

12 Q. And we've covered this before. There is no  
13 documentation from the -- from Transcontinental or any  
14 holders of the notes that evidences your footnote 4, correct?

15 A. That is correct.

16 Q. Yet you met with them just yesterday in connection  
17 with this debtor in possession financing?

18 A. Yes.

19 Q. Did you seek to try to get some documentation from  
20 them evidencing that?

21 A. I -- we clearly outlined the position that's going  
22 to have to be taken the timing for putting this, all of it  
23 in, I mean, file a plan, which we plan to do very shortly.

24 Q. So their position is is that in order to try to  
25 preserve what they view as \$48.8 million worth of notes

1 payable to them, they would try to support it with \$400,000  
2 of debtor in possession financing?

3 A. No, that's not my testimony at all.

4 Q. Well --

5 A. No, that's not my testimony at all.

6 Q. Well --

7 A. My testimony to you is this. Was that these notes  
8 come junior to the secured and unsecured administrative and  
9 priority claims, period.

10 Q. On a property-by-property basis?

11 A. On a property-by property basis.

12 We may be able to amplify that. But that was the plan.  
13 At this point in time, until this hearing is over, I don't  
14 know how many lenders I'm dealing with, or exactly what we're  
15 dealing with. But I do know that the concept of these notes  
16 being taken a junior position, at least on a  
17 property-by-property basis and maybe even on the whole is  
18 going to have to be for the plan and they understand that.

19 Q. Did you ask a Transcontinental representative to be  
20 here at today's hearing?

21 A. No.

22 Q. Don't you think that would have helped explain this  
23 footnote 4?

24 A. I think the footnote 4 would be explained when you  
25 file a plan.

1 Q. And don't you think it would be helpful to get a  
2 commitment with a representative of Transcontinental for a  
3 hearing such as this?

4 A. I just explained to you that the commitment from  
5 them is going to be tied to how this situation works out  
6 here. Obviously it has to be -- there's no way that these  
7 notes are going to be hold up, in my mind, are going to take  
8 a preference. And I think everybody has already realized  
9 that. We can't -- those notes can't take preference over the  
10 lenders getting paid and unsecured lenders getting paid. So  
11 there will have to be a modification. That's understood, how  
12 it's done and the final filing of it will be done in the  
13 plan.

14 Q. Did you do any due diligence on Transcontinental  
15 Realty as to whether they have the financial wherewithal to  
16 provide some liquidity to the debtor?

17 MR. BUNCHER: This is repetitive from the  
18 hearing last time, Your Honor, about -- I think the exact  
19 question --

20 MR. WEITMAN: Well, Your Honor, now we have  
21 the issue of where Mr. Morgan's testimony that they will put  
22 in \$400,000 --

23 THE COURT: Overruled.

24 Q. Did you do any due diligence that they have the  
25 liquidity to fund the \$400,000?

1           A.    I met with the chief counsel, the chief financial  
2   officer, and the president of the company yesterday, who  
3   agreed that they had gone to the board and got it approved.  
4   And that was -- that was when they would be willing to commit  
5   to meet yesterday.

6           Q.    Did you ask them in any way to provide a wire  
7   transfer to the registry of the Court to support their claim  
8   they have \$400,000?

9           A.    That's not the way it's written. That's not the  
10   way the letter is written.

11          Q.    Did you ask?

12          A.    I didn't ask, because that's not the way the letter  
13   is written.

14          Q.    Did you ask for them to wire transfer the funds to  
15   the debtor's account to show they have the financial  
16   wherewithal?

17          A.    That's not the way the letter is written.

18          Q.    Are you familiar with Transcontinental Realty  
19   investor's involvement in the Woodmont Bankruptcy Proceedings  
20   before Judge Hale?

21          A.    No.

22          Q.    Are you aware of the fact that they were supposed  
23   to provide plan financing in the Woodmont bankruptcy  
24   proceedings and they did not come through and the plan went  
25   into default?

1 A. No.

2 MR. WEITMAN: Your Honor, may I hand up a copy  
3 of the docket sheet?

4 THE COURT: You may.

5 MR. WEITMAN: It was a long docket sheet, Your  
6 Honor, so it only covers items 79 and following. I'm sure  
7 the Court can get on line. But -- and you can see the  
8 activity there.

9 THE COURT: Mr. Weitman, this is the  
10 opportunity to ask questions of the witness.

11 MR. WEITMAN: Forgive me.

12 Q. You earlier testified that you thought that  
13 \$400,000 would be provided by Transcontinental, correct?

14 A. Yes.

15 Q. And that they would cover taxes?

16 A. Yes.

17 Q. Can you tell me where --- how it is that they were  
18 cover taxes if those taxes are for 2011 and aren't due until  
19 2012?

20 A. Put it in escrow.

21 Q. And does it say that anywhere in the -- in this  
22 alleged commitment letter?

23 A. No. That's my debtor's commitment. What the  
24 letter says is they would fund up to \$400,000 as FRE request  
25 the money to be funded, which includes when I need to pay the

1 bills, they fund it. And that includes an escrow -- the  
2 debtor is going to do one escrow account for each lender's  
3 collateral.

4 Q. Is there any money for adequate protection payments  
5 for the lenders with liens on the raw land?

6 MR. BUNCHER: Objection, Your Honor. The  
7 escrowing of taxes is adequate protection payments.

8 THE COURT: I don't believe that's the basis  
9 for an objection.

10 MR. BUNCHER: Well, I object to the form of  
11 the question.

12 THE COURT: Overruled.

13 Q. Can you answer the question, please?

14 A. If you answer it with a question, is there a  
15 provision during this interim period, do we file a plan to  
16 pay interest on the loans, no.

17 Q. And, again, when you make the request, then you  
18 think they're going to pay you?

19 A. Yes.

20 Q. And you don't know how that \$400,000 would be  
21 repaid at the time of plan confirmation; do you?

22 A. No.

23 Q. And this is something, again, you just came up with  
24 yesterday, correct? You only got this letter yesterday,  
25 correct?

1 A. Yes.

2 Q. Let's talk a little bit about the Fenton Center  
3 lease that you spoke about last time.

4 A. Yes.

5 Q. I believe it was your testimony that you thought  
6 that with this new lease you were going to bring in, that  
7 that would create new value, correct?

8 A. Yes.

9 Q. That lease was with -- did you say it was HCA?

10 A. Yes.

11 Q. Are you sure it wasn't with HCA's affiliate?

12 A. I don't remember on that. It was referred to as  
13 HCA. I haven't gone in -- I don't remember.

14 Q. And that was a term sheet?

15 A. Yes.

16 Q. And did you forward that term sheet to the secured  
17 lender?

18 A. Yes.

19 Q. NextBank?

20 A. Yes.

21 Q. Did NextBank consent to that term sheet?

22 A. No. NextBank gave me a letter of support from  
23 their counsel that they would back us and welcome the tenant  
24 and work with us in every way possible.

25 Q. And this tenant, you're not sure if it's HCA or an



1 affiliate, correct?

2 A. I know it's related to the HCA Hospital corporation  
3 of America.

4 Q. Did you get any financial information or do any  
5 other due diligence on this affiliate and its financial  
6 wherewithal?

7 A. Not at this time, because we're still in the term  
8 sheet stage.

9 Q. And were they going to provide any type of a  
10 guarantee or letter of credit from HCA to support this lease?

11 A. Again, we're in the term sheet stage.

12 Q. Is there not also a requirement that there would be  
13 tenant improvements that the debtor, FRE, as landlord would  
14 have to fund?

15 A. Yes.

16 Q. Would that not equate to \$3.5 million?

17 A. Probably more than that. It would come close to 4  
18 million.

19 Q. Where is that \$4 million coming from?

20 A. It will come from wherever it has to come from. It  
21 could come from TCI. It could come from additional  
22 financing. It depends. I mean, there's certainly a lot of  
23 value. Close to \$25 million worth of additional value.

24 Q. But isn't it true that Transcontinental prior to  
25 these transfers of the assets used to fund the shortfalls on

1 the various indebtedness owed by these subsidiaries?

2 A. I'm sorry, you're going to have to be more  
3 specific.

4 Q. Didn't Transcontinental and American Realty and  
5 Income Opportunity fund the various shortfalls on these  
6 properties prior to the transfers of December 23rd?

7 A. Well, these properties, you've got to be more  
8 specific.

9 Q. And they elected to stop funding those; did they  
10 not?

11 A. I don't know when that occurred.

12 Q. So they now have monetized their alleged equity of  
13 48 to \$50 million, correct?

14 A. It's not monetized until it's paid.

15 Q. Going back to the Fenton Center lease. There is no  
16 source of 3 1/2 to \$4 million today to fund the tenant  
17 improvements, correct?

18 A. There is no deal today.

19 Q. And would you not also give them rent for free for  
20 a year, free rent for a year under that term sheet?

21 A. Yes.

22 Q. And would you not also be starting the lease at the  
23 end of 2011?

24 A. Correct.

25 Q. And yet in your expert opinion this is a deal to be

1 pursued to create value?

2 A. We are going to continue to pursue the deal until  
3 we get their commitment. And then we get involved in the  
4 commitment and then we get involved in the security and all of  
5 the other aspects that goes with it.

6 Q. And, again, you have not received any consent from  
7 NextBank to the transaction, correct?

8 A. I just got through telling you. They sent me a  
9 letter of support from the counsel supporting the transaction  
10 and allowing us to provide that information to the tenant in  
11 support so that we didn't have a conflicting -- conflicting  
12 issue of worrying about the bankruptcy case.

13 Q. If you would, sir, could you move to Exhibit D in  
14 that same note book? And it's the Schedule D following the  
15 Schedule D, creditors holding secured claims. This would  
16 appear as probably 2 of 5 toward the back.

17 MR. WEITMAN: Your Honor, may I approach the  
18 witness to try to help?

19 THE COURT: Yes.

20 And I'm sorry, tell me again?

21 MR. WEITMAN: Pardon me, Your Honor. It's  
22 Schedule F.

23 THE COURT: What exhibit tab?

24 MR. WEITMAN: F, pardon me, Schedule D, the  
25 exhibit, showing creditors and the property descriptions.

1 THE COURT: So Schedule D?

2 MR. WEITMAN: Yes.

3 THE COURT: For future reference, it would be  
4 very helpful in exhibits as lengthy as this to have them  
5 Bate's page numbered so that we aren't searching through  
6 hundreds of pages hoping to land on the right spot.

7 MR. WEITMAN: I apologize. And, yes, I will  
8 do that in the future.

9 Q. Mr. Morgan, can you take a look at the creditor  
10 that's listed, First Bank & Trust; do you see that?

11 A. Yes.

12 Q. Is that a single asset of the Centura land that was  
13 owned -- that constitutes the collateral of First Bank &  
14 Trust?

15 A. Yes.

16 Q. And the Centura property was transferred by a  
17 transferor entity to FRE, correct?

18 A. Correct.

19 Q. And that as done around December 22nd?

20 A. Whenever, yeah.

21 THE COURT: I'm not sure I'm following the  
22 question. Single --

23 MR. WEITMAN: In other words, that there is a  
24 secured lender with a single property of the Centura land.

25 THE COURT: Right.

1 MR. WEITMAN: And that was transferred --

2 THE COURT: But was it -- are you trying to  
3 say that it was in a single asset entity?

4 MR. WEITMAN: Correct. Pardon me.

5 Q. It is your testimony, is it not, that that was  
6 owned by Iori, Centura, Inc., correct?

7 A. I don't recall the exact entity. We'd have to go  
8 back to the chain.

9 Q. And if Iori Centura, Inc., had not transferred it  
10 to FRE, would this not be a single asset bankruptcy  
11 proceeding of Iori Centura, Inc.?

12 MR. BUNCHER: Object to the extent that calls  
13 for a legal conclusion. But I think he can answer whether  
14 it's one asset or more than one asset.

15 Q. Would there have been just one asset --

16 THE COURT: Sustained.

17 Q. -- in that bankruptcy?

18 A. Yes.

19 Q. I'd then ask you to go to the next one, U.S. Bank.  
20 U.S. Bank's secured collateral is the -- collateral is the  
21 Parkway North Office Building; is that correct?

22 It's just right beneath the last one, sir.

23 A. Okay. Go ahead.

24 Q. Is that correct?

25 A. Yes.

1 Q. And this Parkway North Office Building, was that  
2 not owned by Transcontinental Westgrove, Inc., before  
3 December 23?

4 A. Again, I'll have to have some type of chart. If  
5 you have that, I'll be glad to use it.

6 Q. Can you go to the second page?

7 A. I got it.

8 Q. Do you see where it shows the transfer of the  
9 Parkway North Office Building from Transcontinental  
10 Westgrove, Inc., to FRE Real Estate?

11 A. Yes.

12 Q. Now, looking on your schedule, is that not a single  
13 asset that was owned by Transcontinental Westgrove, Inc.?

14 A. It appears to be so, yes.

15 Q. And then that was transferred, was it not, on the  
16 eve of a foreclosure; do you know?

17 A. I don't know about -- I don't know about the time  
18 of the transfer.

19 Q. Let's go to the next one.

20 A. The transfer of the property, as far as I'm  
21 concerned, happened on the 23rd. If you're talking about the  
22 recording, I don't know about that.

23 Q. Let's go to Petra Mortgage Capital Corp. Do you  
24 see that, sir?

25 A. What page are you on?

1 Q. If you would go back to Schedule D, the exhibit.

2 Is that not a single asset that constituted the

3 collateral of Petra Mortgage?

4 A. It is.

5 Q. And then if you would go to the blue and yellow.

6 Was not the Amaco Office Building owned solely by TCI Amaco

7 Property, LLC?

8 A. Yes.

9 Q. And then it was transferred to FRE Real Estate,

10 Inc., around December 22nd, correct?

11 A. Right.

12 Q. Had that property not been transferred to FRE Real

13 Estate, Inc., would there have been a bankruptcy of TCI Amaco

14 Property, LLC with that single asset?

15 MR. BUNCHE: Calls for the witness to

16 speculate, Your Honor.

17 THE COURT: Sustained.

18 Q. Is there not just a single asset in TCI Amaco

19 Property, LLC just prior to this foreclosure -- just prior to

20 the transfer?

21 A. Yes.

22 Q. Let me ask you to go a little further down, State

23 Bank of Texas.

24 A. Yes.

25 Q. Do you not see some property, this Archin-

1 18.8328 -- 8.32 -- 18.832 acres; do you see that, sir?

2 A. Yes.

3 Q. And was not the owner of the Archin land Coventry  
4 Point prior to the transfer on December 23?

5 A. I'm sorry. I'm trying to find it.

6 Q. I think it's, if you will, the third bubble on the  
7 second page, Coventry Point, Inc.

8 A. Yes, I see that.

9 Q. So that was just a single asset, was it not, this  
10 Archin land within Coventry Point?

11 A. Yes. There are some tenant in common interest  
12 there that -- regarding some land on any of the parking lot  
13 that had some ties. But, yes, it's single.

14 Q. And -- so this would have been a single asset in  
15 Coventry Point, Inc., prior to this transfer, correct?

16 A. Yes.

17 Q. And there would have been a secured creditor, State  
18 Bank of Texas, with that first lien on the property, correct?

19 A. You said, would have been. There was.

20 Q. And there still is?

21 A. Yes.

22 Q. If you would move two more pages. Do you see  
23 Regions Bank as a secured lender?

24 A. What property are we talking about? Are we talking  
25 about Parkwood?



1 Q. No.

2 A. Oh, down here.

3 Q. Now there you're showing -- do you see Regions  
4 Bank?

5 A. Yes, I do.

6 Q. And there was a transfer to -- and is its sole  
7 collateral the Westgrove Air Plaza property?

8 A. Let me get back over here to your bubbles.

9 Q. Page 5, I believe.

10 A. Yes, it is.

11 Q. And was that previously owned by Westgrove Air  
12 Plaza Limited?

13 A. Yes.

14 Q. And would there have been only a single asset of  
15 this Westgrove Airplane office hanger in Westgrove Air Plaza,  
16 in that entity prior to its transfer to FRE around December  
17 22nd?

18 A. Is your question was it a single asset that was  
19 transferred?

20 Q. Yes.

21 A. Yes, it is.

22 Q. And there was a single asset in Westgrove Air  
23 Plaza, correct?

24 A. Yes.

25 Q. Now, what is the connection of Gene Bercher to

1 Prime Income Asset Management?

2 A. I understand his title was chief financial officer.

3 Q. And is he -- does he have any connection with the  
4 transferor entities?

5 A. Is he an officer of each entity, I'm not sure about  
6 that...

7 Q. Is he connected with American Realty and  
8 Transcontinental?

9 A. Well, I mentioned to you that Prime is the advisor  
10 connected to -- whether he's the official officer of that, I  
11 don't know.

12 Q. Isn't it true that you have Mr. Bercher as one of  
13 the authorized signatories on the debtor in possession  
14 accounts?

15 A. No.

16 Q. Did you not have him as an authorized signer as of  
17 the date of a hearing, the 341 Meeting of Creditors?

18 A. There was an error on that. The way that I did it  
19 was I had Regis as an agent for FRE for the DIP accounts.  
20 And as an agent, somebody went around and got a bunch of  
21 signatures. And when I found out that was the case, we  
22 changed all of that. So only Mr. Landers, now, and Rick  
23 Coney they're authorized signatures.

24 MR. WEITMAN: Just one moment, Your Honor.

25 THE COURT: Yes.

1 MR. WEITMAN: Your Honor, I pass the witness.

2 THE COURT: Anyone else have questions for

3 Mr. Morgan?

4 Mr. Leninger.

5 CROSS-EXAMINATION

6 BY MR. LENINGER:

7 Q. Mr. Morgan, my name is John Leninger. I represent  
8 Armed Forces Bank.

9 A. Yes, sir.

10 Q. I want to talk to you about the proposed financing  
11 from TCI.

12 Do you understand the concept of if the collateral is  
13 worth more than my debt, I get to accrue interest  
14 post-petition?

15 A. I'm not aware of it.

16 MR. BUNCHER: Objection; calls for a legal  
17 conclusion.

18 Q. You're not familiar with that concept?

19 A. No.

20 Q. Okay. I want you to assume that if the collateral  
21 is worth more than my debt, I get to accrue post-petition  
22 interest. Can you assume that for me?

23 A. If you would assume my plan does not support that,  
24 yes.

25 Q. Okay. What I want to know is, is the financing

1 that's to be provided by TCI prime that interest, to the  
2 extent I'm entitled to it?

3 A. Go a little bit slower, please.

4 Q. The financing that's being provided by Prime,  
5 according to the letter it says that it's behind the first  
6 mortgage liens. Armed Forces Bank is the first mortgage lien  
7 holder.

8 A. That's correct.

9 Q. If Armed Forces Bank is entitled to accrue interest  
10 on its claim post-petition, does the money coming in from TCI  
11 prime my right to interest?

12 A. If you're asking me does this current financing  
13 provide for payment of interest, no. It only provides for  
14 the --

15 Q. Not what I'm asking.

16 A. Okay. Then maybe you can ask it different and I  
17 can answer it different.

18 Q. The letter provides that the financing to be  
19 provided by TCI is behind the first mortgage lien.

20 A. That's correct.

21 Q. Armed Forces Bank has the first mortgage lien.

22 A. That's correct.

23 Q. We're going to assume that Armed Forces Bank gets  
24 to accrue interest on its claim post-petition.

25 A. Let's go with that assumption, okay.

1 Q. If TCI loans money to Armed Forces Bank collateral,  
2 does the lien given TCI prime the interest that I'm accruing  
3 post-petition?

4 A. Absolutely not.

5 Q. Excuse me?

6 A. No.

7 Q. Okay. Was TCI a borrower from Armed Forces Bank?

8 A. I don't know exactly. I'd have to go to the entity  
9 and see what it was. But I'm sure it's one of the related  
10 entities.

11 Q. Did TCI own the Kenwest property?

12 A. Again, I'd have to go back to see who actually  
13 owned the pieces of property. I'm not sure. I can go back.  
14 There's a bubble, if you like and we can go --

15 Q. Yes. Why don't you go back to the bubble and  
16 refresh your memory on that.

17 A. Okay. Now, you're asking first about the Mercer  
18 property, right?

19 Q. I'm asking about Kenwest.

20 A. Oh, Kenwest, I'm sorry.

21 Okay. It says ART Collection, Inc.

22 Q. Was the original owner?

23 A. Yes.

24 Q. It wasn't TCI?

25 A. No.

1 Q. Would you go down to the next level, please.

2 A. Well, that's the last one on mine. Kenwest is the  
3 last one.

4 THE COURT: Where are you looking,  
5 Mr. Leninger?

6 MR. LENINGER: I'm looking at page 6. It  
7 appears that they're different copies. But the stipulation  
8 we've entered, Your Honor --

9 THE COURT: Well, I'm looking at page 6. And  
10 it's the Kenwest land is the last bubble on there.

11 MR. LENINGER: Correct, Your Honor. That is  
12 not -- the one I have I think is different than the one you  
13 have.

14 May I approach?

15 THE COURT: Uh-huh.

16 MR. BUNCHER: Well, wait a second. The one  
17 she has is the one that's been entered into evidence. We  
18 can't -- there have been numerous drafts of this thing. You  
19 may have a draft that's not a correct copy.

20 MR. LENINGER: Well, this one says the  
21 Transcontinental.

22 MR. BUNCHER: If you want to ask the witness  
23 about the exhibit that's been admitted, I have no objection  
24 to that.

25 MR. LENINGER: He doesn't have the same

1 exhibit, Doug.

2 MR. BROWN: Your Honor, it's Exhibit 192. And  
3 it is the same one that we offered this morning, the one that  
4 Mr. Leninger is asking him about.

5 MR. BUNCHER: Okay. Well, then I guess give me  
6 my copy. Maybe the one I handed him is the draft.

7 THE COURT: Oops.

8 A. Yes.

9 Q. Okay. Now, prior to the transfers, as reflected on  
10 Exhibit 192, who was the owner of the Kenwest property?

11 A. Transcontinental Realty Investor, Inc.

12 Q. And do you know what it would have taken for  
13 Transcontinental to bring that note current prior to the  
14 transfer?

15 A. I do not.

16 Q. So if it was \$257,000, you wouldn't be aware of it?

17 A. No.

18 Q. So I want you to assume that it was \$257,000.

19 A. Okay.

20 Q. Why did Transcontinental, if it has this money, not  
21 use the money to pay Armed Forces Bank?

22 MR. BUNCHER: Object to speculation, Your  
23 Honor.

24 THE COURT: I don't think you've laid a  
25 predicate for him knowing. So sustained.

1 Q. Do you know if Kenwest -- excuse me. Do you know  
2 if TCI has the \$400,000?

3 A. I know the three people in charge of the company --

4 MR. LENINGER: Objection; non-responsive.

5 Q. Do you know if TCI has the money?

6 A. I've already testified that what I know is what was  
7 told to me yesterday in the meeting.

8 MR. LENINGER: Objection; non-responsive.

9 THE COURT: Sustained.

10 Q. Do you know if TCI has the money? It's a yes or  
11 no.

12 A. No.

13 Q. The letter provides that you have to make a draw  
14 request to TCI.

15 A. Right.

16 Q. Is TCI required to fund the money after a draw  
17 request?

18 A. Yes.

19 Q. Is that in the letter?

20 A. It says they'll pay it as presented.

21 Q. Is --

22 THE COURT: One second. Mr. Kinvig.

23 MR. KINVIG: I hate to object to what's  
24 essentially co-counsel's questions. But I think that, you  
25 know, any time the witness is testifying about the contents



1 of a letter that has been sustained as hearsay, that's really  
2 now allowable.

3 THE COURT: I was wondering where you've been.

4 Yes.

5 MR. LENINGER: I was going to go with it until  
6 you let me get away -- as long as you let me get away with  
7 it.

8 Q. What's the interest rate that you're going to pay  
9 TCI for this loan?

10 A. I'm going to pay -- it's going to accrue 6 percent.

11 MR. KINVIG: Your Honor --

12 THE COURT: Mr. Leninger, we've sustained the  
13 objection. This document is not in evidence.

14 MR. LENINGER: I'm asking him what his  
15 understanding is of the interest rate that they have asked  
16 for.

17 MR. KINVIG: Your Honor, there really is no  
18 long and no evidence of a loan until they can produce a  
19 document that can be authenticated that shows that there is  
20 an offer on the table. Since they've not been able to  
21 produce any authenticated document, there is no loan.  
22 There's no offer to make a loan. There's nothing. And so I  
23 don't think there's anything that that can't be testified  
24 about.

25 THE COURT: Well, unfortunately you let

1 Mr. Buncher ask him a bunch of questions about his oral  
2 understanding. Technically, I think you're correct. But I'm  
3 not quite sure what to do now since we've allowed direct  
4 examination about something for which a best evidence  
5 objection would have been sustainable, but was never made.

6 MR. KINVIG: Well, Your Honor, I think that  
7 Mr. Buncher in going to what Wick's counsel had also said,  
8 most of Mr. Buncher's questions or maybe all of Mr. Buncher's  
9 questions were when he was technically supposed to be  
10 authenticating the document.

11 THE COURT: No. Following. Following my  
12 sustaining your objection he asked a bunch of questions about  
13 this.

14 MR. KINVIG: My apologies, then.

15 THE COURT: So unfortunately I'm going to  
16 allow this. But it is odd. The movants may want to  
17 coordinate a bit, because Mr. Weitman asked a bunch of  
18 questions about a document that's not been admitted into  
19 evidence. And now, Mr. Leninger, you are, as well.

20 Q. Did you say 6 percent?

21 A. No. I thought you were talking about something  
22 else.

23 The interest rate has not been set. I have advised,  
24 however, and we have to file this with a motion to get the  
25 DIP approved, that we have to be governed by the lowest

1 interest rate on the lands. And I have a schedule that I've  
2 looked at relative to the non-default contract rates on the  
3 land loans. And it will certainly not exceed the lowest  
4 contract rate on any of the land loans.

5 Q. You spoke about a plan. Have you begun drafting a  
6 plan for this debtor?

7 A. As soon as this is over, I'm ready to start  
8 drafting one.

9 Q. Have you retained an interest rate expert?

10 A. Not yet, no.

11 MR. LENINGER: No further questions, Your  
12 Honor.

13 THE COURT: Anyone else?

14 Mr. Buncher, redirect?

15 MR. BUNCHER: I don't think we have anything  
16 further, Your Honor.

17 THE COURT: All right. Mr. Morgan, thank you  
18 very much. You may step down.

19 THE WITNESS: Thank you.

20 MR. WEITMAN: Your Honor I'd like to call Mr.  
21 Greg Crown to the stand.

22 THE COURT: Mr. Crown, if you'd come forward,  
23 please.

24 We'll have you sworn in, please.

25 (The witness was sworn by the courtroom deputy.)

1 GREG CROWN

2 The witness, having been duly sworn to tell the truth,  
3 testified on his oath as follows:

4 DIRECT EXAMINATION

5 BY MR. WEITMAN:

6 Q. Are you not the vice president of Prime Income  
7 Management?

8 A. Prime Income Asset Management, yes.

9 Q. And was that the financial advisor to each of the  
10 transferor entities?

11 A. It was the advisor to the -- to the parents of the  
12 transferor entities in the case that were not TCI or OIRI.

13 Q. Well, with respect to, say, TCI Texas Properties,  
14 TCI Adams --

15 A. So for all of those that were TCI directly owned,  
16 it was the advisor, correct.

17 Q. And now it's providing financial advisory services  
18 to Mr. Morgan and the debtor, correct?

19 A. Yes.

20 Q. And there's no money to pay you, correct, or pay  
21 Prime Income, correct?

22 A. That's correct.

23 Q. You're just doing it for free, correct?

24 A. That's correct.

25 Q. And is Gene Bercher the president or an officer of

1 Prime Income?

2 A. He is.

3 Q. And was he an authorized signer of the debtor in  
4 possession accounts?

5 A. I believe at the time of the last hearing he was.  
6 And I believe that's since been changed.

7 Q. Now, prior to these transfers on December 22nd,  
8 2010, isn't it true that American Realty, Transcontinental,  
9 and Income Opportunity would fund the necessary expenses and  
10 interest payments and the like on the raw land properties?

11 A. That is correct.

12 Q. Do you know how much was being funded by those  
13 entities prior to bankruptcy?

14 A. I do not.

15 Q. Are you aware that they also restructured the ad  
16 valorem taxes on a number of the properties getting financing  
17 from Propel?

18 A. I am aware of that.

19 Q. And were they making interest and principle  
20 payments on the Propel debt prior to bankruptcy?

21 A. To my knowledge they were.

22 Q. And they were also paying for, what, the  
23 maintenance and insurance on the raw land properties?

24 A. That's correct.

25 Q. And yet they decided, did they not, to transfer all

1 of these entities to FRE Real Estate around December 22nd?

2 A. That's correct.

3 Q. And these seller notes, do you have any knowledge  
4 as to whether those accurately reflect the value or the  
5 equity in each of these properties?

6 A. I was not a party to that decision at all.

7 Q. In fact you came in later; did you not, in  
8 connection with trying to assist Mr. Morgan?

9 A. Yeah. I became involved in the FRE related  
10 entities after the transfer. That's correct.

11 Q. Now, if you consider Transcontinental Realty  
12 Investors after the various transfers, okay, it still has  
13 property, correct?

14 A. Yes.

15 Q. And does American Realty Trust have some other  
16 properties, as well?

17 A. It does.

18 Q. And does Income Opportunity Realty Trust Investors  
19 have properties?

20 A. Yes.

21 THE COURT: And this is after December 23?

22 THE WITNESS: Yes.

23 Q. They chose not to transfer that into FRE Real  
24 Estate, correct?

25 A. Yes. There are properties that were not

1 transferred that they owned.

2 Q. And the reason for that, was it not, that those  
3 were producing properties, they were not troubled?

4 A. I -- again, I was not a party to the decision as to  
5 why it was done for one property and not another.

6 Q. You don't recall testifying that only the problem  
7 properties got transferred?

8 A. No. I believe my testimony was that these were  
9 problem properties and they were transferred. I don't -- I  
10 did not testify, to my knowledge, that they were -- these  
11 were the only problem properties.

12 Q. So there are still other properties in these after  
13 December 22nd that were not transferred into FRE Real Estate?

14 A. Yes.

15 Q. Can you describe to the Court what you shared with  
16 us at the 341 Meeting. One of the pressure being faced by  
17 Transcontinental and these transferor entities for the last  
18 several years?

19 A. Well, owing to the backdrop of the economic  
20 recession, it's had a tremendous negative impact on real  
21 estate and financing markets. In the real estate markets  
22 significant fall off in leasing of properties whether they be  
23 office or retail. In the area of land a catastrophic drop  
24 off in any land related to residential construction. And  
25 similar though not great a drop off in commercial land. So

1 those have all put pressure on all real estate companies; not  
2 just TCI, ARI, and those who are dependent upon the sale of  
3 land and/or the leasing of commercial and/or residential  
4 properties.

5 Q. Now, is it your understanding that Transcontinental  
6 Realty Investors has liquidity issues?

7 A. Yes. I think that would be a fair statement that  
8 that along with most other real estate entities has  
9 challenges as far as real estate -- as far as liquidity goes.

10 Q. Were you involved in the Woodmont bankruptcy  
11 proceedings before Judge Hale?

12 A. I was.

13 Q. Did you not provide a declaration in support of the  
14 plan of reorganization of Woodmont and the affiliated  
15 entities? Do you recall providing a declaration and filing  
16 it with the Court?

17 A. I believe such a filing was made, yes.

18 Q. Could you share with all of us what role  
19 Continental would have provided or was to provide under the  
20 Woodmont plan of reorganization as amended?

21 A. The -- first of all, the Woodmont was a collection  
22 of eight raw land properties, no income producing properties  
23 administered as one. But there were eight separate  
24 properties. Eight separate bankruptcies. TCI was to be the  
25 funding source for the payments under the plan.



1 Q. And by TCI, you mean Transcontinental?

2 A. Transcontinental Realty Investors, yes.

3 Q. Was it supposed to fund interest payments and tax  
4 payments and the like?

5 A. It was.

6 Q. Do you know what the total amount of its commitment  
7 was to the -- in the Woodmont proceedings?

8 A. Define the word commitment.

9 Q. How much would it have been obligated to fund?

10 A. Well, that's kind of an open ended number  
11 because --

12 Q. Just on a yearly basis.

13 A. Well, it depends on when the properties were sold.  
14 The primary effort under the plan was to sell the property.  
15 So to the extent a property sold, they would be no longer  
16 required to fund that. So it was actually unknown as to what  
17 those would be on a year-to-year basis, because it was  
18 unknown when you would sell a property.

19 Q. Were there projections that you generated to  
20 reflect what you thought might be the range of funding  
21 necessary by TCI?

22 A. Yes. I don't recall them as I sit here. I'd have  
23 to refer to some other --

24 Q. Would it be in the millions of dollars?

25 A. Depending on when assets were sold, it could have

1 been in the millions of dollars, correct.

2 Q. Did TCI default in making its payments causing  
3 various creditors to come to the Court and argue that the  
4 plan was busted and the case should be dismissed?

5 A. Well, that occurred on six of those eight  
6 bankruptcies. Two are not in default, six are in default.

7 Q. And is the result that Judge Hale ordered the  
8 dismissal of the cases where the plans went into default  
9 without the financing from TCI?

10 A. You know, to be honest, I do not know what the  
11 orders were made by the Court. I know that they were in  
12 default, but I don't know what the final orders were from the  
13 Court.

14 Q. And were you working then with the debtor to try to  
15 sell these raw land properties during that time?

16 A. Yes.

17 Q. How did those raw land properties compare with the  
18 debtor's properties that are here in this proceeding?

19 A. Generally smaller. They were -- they ranged in  
20 size from two acres to 15 acres. They're all located in  
21 Dallas or Irving. They are -- were primarily slated for  
22 either residential development, multi-family residential, or  
23 mixed used commercial. So there was a site at the Galleria.  
24 There was a site up near Bent Tree on the Tollway. A couple  
25 of others just west of the Tollway. Two out in Las Colinas.

1 Q. Is it pretty close to all of the properties we saw  
2 in that Google map that was entered before?

3 A. That Google map concentrates on Las Colinas and the  
4 Mercer Crossing area, so it doesn't go as far east as the  
5 Galleria.

6 Q. But would those properties be easier to sell or  
7 harder to sell than the properties that are now in the FRE  
8 bankruptcy proceeding?

9 A. It's very tough to gage because each and every  
10 property has its own advantages, disadvantages, values, so I  
11 couldn't answer that question as to whether it would be  
12 easier, harder.

13 Q. So as recently as January 27th Transcontinental  
14 missed payments and just allowed the property, essentially,  
15 to be taken by the secured lenders?

16 A. In the case of the six, that's correct.

17 Q. I understand that there is an aircraft hanger lease  
18 where payments are owed to the Wicks Revocable Trust?

19 A. That's correct.

20 Q. We covered a little of this at the 341. Are there  
21 any funds available to make the lease payments to Wicks  
22 Revocable Trust?

23 A. I believe that at least for Hanger Number 1 --  
24 there are two of them. It's one lease, but there are two  
25 hangers out there. Hanger Number 1 is leased and has

1 available cash to make at least a partial payment on that  
2 lease. Hanger Number 2, as of November of 2010 was vacated.  
3 So it no longer has any revenue. They're in search of a  
4 tenant, but at the moment do not have one. Although I  
5 believe there is at least one tenant in the works.

6 Q. But there are no funds to make those lease  
7 payments?

8 A. None on Addison II. A partial on Addison I.

9 Q. In fact, did you have anything to do with the  
10 debtor's monthly operating report that was filed yesterday  
11 with the Court?

12 A. Yes.

13 Q. Is there not a statement that the debtor is  
14 deficient in, or delinquent in making its payments to that  
15 landlord?

16 A. Yes, it is.

17 Q. And, again, no known source of payment now correct?

18 A. I should point out, though, for the MRI -- MOR  
19 filed yesterday for January, the approval of the cash  
20 collateral orders was received so late in the month that some  
21 of those payments were just not made.

22 Q. But are any of the secured lenders with income  
23 producing properties agreeing to use any of the net operating  
24 income to fund lease payments to Wicks Revocable Trust?

25 A. No. They all have to stand on their own.

1 Q. And likewise with respect to any net operating  
2 income from the income producing properties to fund the  
3 expenses of the raw land, correct? They cannot be used.

4 A. Under the current cash collateral orders, that is  
5 correct.

6 Q. Do you know whether the debtor has any intention to  
7 try to use cash collateral from the income producing  
8 properties in order to fund the raw land properties?

9 A. The plan hasn't been finalized yet, so I can't  
10 comment on it.

11 Q. But is there talk about that now?

12 MR. BUNCHE: Objection to the extent that  
13 calls for discussion with counsel.

14 THE COURT: Sustained.

15 Q. Can you answer that without revealing  
16 attorney/client privilege communications?

17 A. No.

18 Q. And it's your position, then, that Mr. Buncher is  
19 your counsel?

20 A. He's the counsel for the debtor.

21 Q. And then you serve the debtor?

22 A. And I serve the debtor.

23 Q. And has there been an application to have your firm  
24 retained as financial advisor?

25 A. To my knowledge, there has not. Of course, there's

1 no financial arrangement either.

2 Q. Do you get a success fee like Mr. Morgan thinks he  
3 will get from this case?

4 A. No.

5 Q. Are you aware of any applications to retain real  
6 estate brokers with respect to any of these properties?

7 A. I'm not aware of it. But I am not involved in that  
8 end of the effort.

9 Q. Were you involved in any way with the marketing and  
10 brokerage efforts at the transferor entities for the year or  
11 so before these properties were transferred to FRE on or  
12 about December 22nd, 2010?

13 A. No. I was not involved in the transferor entities  
14 nor their properties at all prior to the -- at or about the  
15 time of the petition.

16 Q. As an officer of Prime Income Management --

17 A. Asset Management.

18 Q. -- Asset Management, thank you, were you  
19 knowledgeable about the owners of such properties seeking to  
20 try to re-finance, market, sell any of the properties that  
21 are now part of the debtor's estate?

22 A. Yes. Peripherally. I was not involved directly.  
23 But I was -- I office in the approximate area of those people  
24 that were.

25 Q. Is it your view that these properties were marketed

1 sufficiently during the period prior to this bankruptcy?

2 A. I know they were marketed. Again, I'm not familiar  
3 with the exact details of that marketing effort.

4 Q. Is it your understanding that there's any financing  
5 available out there to re-finance these properties, either  
6 the income producing or the raw land properties?

7 A. I know there was significant efforts to try to  
8 extend and/or restructure the existing loans. And I also  
9 know that there was significant effort to try to replace  
10 those loans on various properties. But I don't know as to  
11 the availability.

12 Q. And they were unsuccessful?

13 A. Unsuccessful to date, that's correct.

14 Q. Is it your understanding that the debtor through  
15 your efforts at Prime is in any way trying to re-finance  
16 these properties based on values that reflect, if you will,  
17 the imputed equity values reflected in those seller notes?

18 A. Restate that question for me, will you?

19 Q. We understand from earlier testimony that the  
20 transferor entities received seller notes that then went  
21 upstream to Transcontinental, American Realty, and the  
22 others, correct?

23 A. That's correct.

24 Q. And there was testimony, as I understand it, that  
25 that was a perceived value of the property, maybe book value

1 of the property in excess of the ad valorem tax liens, the --  
2 and the secured debt against it?

3 A. That's correct.

4 Q. Is the debtor seeking to refinance the property  
5 using those values, inclusive of this "alleged equity"?

6 A. Well, I know they're seeking to refinance the  
7 properties at least to replace the existing financing on  
8 either more favorable terms or -- probably more favorable  
9 terms. I can't comment as to whether any of those take outs,  
10 if you will, were sought to be any higher than the existing  
11 loans. I don't know.

12 Q. And would they be the same principals at  
13 Transcontinental to failed to make the payments in the  
14 Woodmont cases?

15 A. When you say principals --

16 Q. Would they be the same people working to try to  
17 refinance that were in -- that are at Transcontinental and  
18 who failed to make the Woodmont payments?

19 A. Well, the senior management is the same senior  
20 management, if that's what you're asking.

21 MR. WEITMAN: Your Honor, I pass the witness.

22 CROSS-EXAMINATION

23 BY MR. STABER:

24 Q. Mr. Crown, my name is David Staber. I represent  
25 Sidney Wicks as Trustee.



1 A. Uh-huh.

2 Q. I had a couple of questions for you.

3 Mr. Weitman asked you about Prime's work for the debtor. Is  
4 there any written agreement between the debtor and Prime for  
5 the services you're providing?

6 A. To my knowledge, there is not.

7 Q. Okay. Does Prime also provide work for American  
8 Realty and Transcontinental?

9 A. It does.

10 Q. And prior to the transfer of the debtor's property  
11 to the debtor, did Prime provide services to American Realty  
12 and Transcontinental relating to any of those properties that  
13 were transferred?

14 A. Well, they provide services related to the overall  
15 portfolio. So I'm sure those properties were included in  
16 some of those efforts.

17 Q. Okay. And since those properties were transferred  
18 to the debtor, has Prime provided any services ot American  
19 Realty or Transcontinental relating to those properties?

20 A. The properties that were transferred?

21 Q. To the debtor, yes.

22 A. Yes, that's the rule -- one of the rules that has  
23 played is, I think related to -- given the fact that  
24 Transcontinental and/or some of those other stated entities  
25 are the note holders, if you will, on those notes. And the

1 best interest of those note holders, they provided those  
2 services to the debtor.

3 Q. Okay. I'm going to shift gears on you real quick.

4 A. All right.

5 Q. And go quickly into a different area.

6 Did you assist in the preparation of the schedules and  
7 statements in this case?

8 A. I did.

9 Q. Did you -- were you the primary draftsman of those  
10 schedules and statements?

11 A. Can I describe the process and you can --

12 Q. Sure. That would be great.

13 A. I called upon accounting and legal personnel with  
14 Prime and accounting personnel and property management  
15 personnel with Regis to provide input information for the  
16 SOFA and the schedules. They provided those in the form of  
17 schedules and/or just raw information that I collated,  
18 examined, reviewed, questioned, provided in turn to a  
19 paralegal at Neligan Foley who prepared the schedules. I  
20 then reviewed those schedules along with other personnel at  
21 both Regis and Prime.

22 Q. Okay. Did you go over the schedules with  
23 Mr. Morgan before you signed them?

24 A. Yes.

25 Q. And did Mr. Morgan make any changes to what you had

1 drafted?

2 A. To my recollection, no.

3 Q. Did Mr. Morgan ask you any questions about anything  
4 in the schedules?

5 A. Not at the time I presented them. But, of course,  
6 we had talked about so much of this along the way in terms of  
7 values and debt and taxes and what have you. So we had a  
8 lot -- we had discussed a lot of those topics already.

9 Q. Okay.

10 A. So when I presented the schedules to him, he had  
11 seen a lot of those numbers in one form or another already.

12 Q. All right. But he didn't point to anything in  
13 particular and ask what it was about, or is that right, or  
14 anything?

15 A. Not to my recollection, no.

16 Q. Okay. Now, I noticed that in the schedules broadly  
17 the trade creditors were all essentially creditors that the  
18 debtor had assumed; is that your understanding?

19 A. Yes. Yes. Well, the debtor, FRE Real Estate,  
20 Inc., to the extent that it already owned Fenton Center  
21 was -- to the extent that it did own Fenton Center at the  
22 time.

23 Q. Okay. So other than Fenton Center --

24 A. Yes.

25 Q. -- all of the trades assumed.

1 Did you have any roll in the assumption of that debt?

2 A. No.

3 Q. Are you aware of any trade creditor giving the  
4 prior party it contracted with a release of that party's  
5 obligation on an assumed debt?

6 A. I'm not aware of that.

7 Q. Okay. Are you aware of any of the trade debt  
8 consenting to an assumption by FRE?

9 A. I'm not aware of that.

10 Q. Okay. Did you draft the list of co-debtors?

11 A. I did.

12 Q. And did you list every prior entity for these  
13 unsecured creditors that had actually incurred that debt?

14 A. Are you talking about the trade payables?

15 Q. Yes.

16 A. No.

17 Q. And why didn't you do that?

18 A. My interpretation of that was primarily related to  
19 the tax loans and the secured creditors.

20 Q. Okay. So -- did you consult legal counsel on  
21 whether unsecured creditors whose debt had been assumed, that  
22 the prior obligor should be listed or not?

23 A. I --

24 MR. BUNCHER: I'd caution the witness not to  
25 divulge any communications with counsel. I don't think his

1 question quite got there. But --

2 MR. STABER: I really tried not to get there,  
3 Your Honor.

4 THE COURT: Understood.

5 Q. Did you seek legal advice as to whether those  
6 entities should be listed?

7 A. I did not seek legal advice.

8 Q. You made that determination on your own?

9 A. I presented the schedules to my attorney, or the  
10 attorney for the debtor.

11 Q. Okay. But that was not an area of inquiry to that  
12 attorney?

13 A. No.

14 Q. Okay. When did you begin working on the schedules?

15 A. Began working on the schedules after the petition  
16 date.

17 Q. Mr. Weitman asked you a couple of questions. And,  
18 again, I'm going to try to be precise here on the  
19 attorney/client privilege issues about where we are going  
20 forward. In your conversations with the debtor's counsel  
21 regarding what's going to happen on these properties, are you  
22 acting as a representative of the debtor or of American  
23 Realty or Transcontinental?

24 A. I've been asked to -- by my superiors at Prime to  
25 assist the debtor. So that's what I'm doing.

1 Q. Okay. But Prime also does work for American Realty  
2 Trust and Transcontinental, right?

3 A. That's correct.

4 Q. And as part of that work that Prime is doing for  
5 those two entities, does that involve what's going to happen  
6 with these debtors' properties?

7 A. I'm not quite sure what you're asking. I must --

8 THE COURT: Repeat your question.

9 Q. Sure. The work that Prime is doing regarding what  
10 is going to happen to these properties in the bankruptcy, is  
11 it providing any of those services for American Realty or  
12 Transcontinental?

13 A. Well, it is -- American Realty and Transcontinental  
14 are clients of Prime. It provides asset advisory services to  
15 those -- to those entities. It is -- to that extent, there  
16 is communication back and forth.

17 MR. STABER: I'm going to object as  
18 non-responsive, Your Honor.

19 THE COURT: Sustained.

20 MR. STABER: I would ask the Court that the  
21 witness answer the question. I will repeat it, if that will  
22 assist the Court.

23 Q. The services that are being provided regarding what  
24 happens to the property going forward by Prime, are those  
25 services also being provided to American Realty and

1 Transcontinental?

2 A. With respect to these properties?

3 Q. With respect to these properties.

4 A. And when you say services, do you mean my services?

5 Q. I mean the services of Prime, your employer.

6 A. Well, there are -- there are people at Prime who  
7 work because they have an interest in these properties based  
8 on those seller notes that are working -- because they're top  
9 clients, TCI, IORI, ART, have interest, are overseeing that  
10 interest, yes.

11 Q. And what happens to those properties in the future?

12 A. Absolutely a great interest to them.

13 Q. Okay. When you are having conversations with  
14 debtor's counsel regarding what happens to those properties  
15 in the future, are you representing ART and Transcontinental,  
16 or are you representing the debtor?

17 A. I've never thought of it that way, so I'm trying to  
18 think of what I -- what I truly am doing there.

19 I've been asked to assist the debtor. I'm not a  
20 decision maker in any respect. Dave Morgan and others are.  
21 So when I provide -- when I provide services to them, it's  
22 primarily to do this or analyze this, or what have you. So  
23 I'm not providing any recommendations whatsoever to, you  
24 know, to them in terms of strategies or what have you. So I  
25 have to say I'm an employee of Prime. And my -- and Prime is

1 an advisor to TCI and ARI and OIRI.

2 Q. So when you're having conversations regarding the  
3 debtor's properties, you're doing that on behalf of TCI and  
4 ARI?

5 A. Yes. I would have to say that's correct.

6 Q. And what were those conversations about what's  
7 going to happen to the debtor's property in the future?

8 MR. BUNCHER: I'm not sure -- I object to the  
9 form. I'm not sure what conversations he's asking about.

10 Q. Do you recall --

11 MR. STABER: I can clarify.

12 Q. Do you recall Mr. Weitman asking you about  
13 conversations a moment ago about what's going to happen to  
14 the debtor's property in the future?

15 A. Okay.

16 Q. And do you recall at that time the Court sustained  
17 an objection that those conversations involved  
18 attorney/client privilege?

19 A. Okay.

20 Q. Okay. Now, I am asking the same question. What  
21 were those conversations?

22 MR. BUNCHER: If he's asking about  
23 conversations with counsel, Your Honor, I object. That's  
24 attorney client. Mr. Crown has given testimony that he is  
25 assisting the debtor. He's the agent of the debtor in



1 connection with the work he's doing on this bankruptcy case.

2 I think he's getting privileged communications.

3 THE COURT: Unfortunately I'm going to have to  
4 overrule. The witness just said that when he's having  
5 conversations about the debtor's property, he's representing  
6 the parent and not the debtor.

7 MR. BUNCHER: I understand what he just said.  
8 But, Your Honor, a few questions ago he said it differently.  
9 And so I do object. And to the extent the Court would allow  
10 Mr. Staber to question this witness about communications he's  
11 had with debtor's counsel, I think that's attorney/client  
12 privilege. He's testified -- if you read his testimony as a  
13 whole, he has clearly said he is acting in a capacity as an  
14 agent for the debtor. Now, he may be in certain instances  
15 also acting for Prime as an agent for TCI and ART. But I do  
16 not think that this questioning permits this lawyer to pierce  
17 the privilege with the debtor at this point in time.

18 THE COURT: Response?

19 MR. STABER: Your Honor, I believe his  
20 testimony has been clear that discussing what's going on  
21 going forward on these properties, part of the hat, or at  
22 least one hat he's wearing is as a representative of the note  
23 holders who are either unsecured creditors or subordinated to  
24 unsecured creditors as to what happens here and, therefore,  
25 those conversations when he's wearing that hat, he is not

1 wearing the client hat as to what goes forward. And,  
2 therefore, I don't think any privilege attaches to those  
3 conversations based on the record we've established on  
4 relationships, Your Honor.

5 THE COURT: I happen to agree. The objection  
6 will be overruled. I think, Mr. Buncher, that's what happens  
7 when the debtor doesn't have its own professionals and has an  
8 exclusive relationship. I don't think you can sustain  
9 privilege on the basis of the testimony that this witness has  
10 given. He's wearing too many hats in this case.

11 MR. BUNCHER: I respectfully disagree. But on  
12 the other hand, I don't -- the question asked is so broad in  
13 terms of conversations. I don't know what specific  
14 conversation he's asking about on what specific date and who  
15 was present and who wasn't present. And also whether he has  
16 established in connection with whatever specific conversation  
17 he wants to ask the witness about whether Mr. Crown would  
18 acknowledge he was acting in any capacity other than as an  
19 agent for the debtor. So I still do not think he has gotten  
20 to where he's trying to get. I respect the Court's ruling.  
21 But I respectfully disagree.

22 THE COURT: Understood.

23 You may proceed.

24 MR. STABER: Thank you, Your Honor.

25 Q. Have you had discussions with the debtor about how

1 they're going to reorganize these properties?

2 A. Yes.

3 Q. And in connection with those discussions, what is  
4 the basic outline that the debtor plans to do?

5 A. Well, I think it still has to -- all of the details  
6 still have to be worked out. But it's primarily what one  
7 might expect. For the income producing properties, a  
8 strategy of continuing to improve leasing activities.  
9 Seeking to re-finance properties, to the extent that they can  
10 be re-financed. Or seeking to sell properties. As related  
11 to the non-income producing properties, the land, again as  
12 you might expect, the primary effort will be to sell those  
13 properties. A concurrent effort to re-finance the  
14 properties, if that's possible. So there's not rocket  
15 science associated with it. You've got these assets. You  
16 can improve their performance, sell them, and/or re-finance  
17 them.

18 Q. And these assets Prime is well familiar with,  
19 correct?

20 A. Yes.

21 Q. And it's well familiar with efforts to sell these  
22 properties that were transferred into the debtors, correct?

23 A. Yes.

24 Q. And is it safe to say that over the past year, 18  
25 months, there have been efforts to, especially the unimproved

1 property to sell them?

2 A. I'm sure there have, yes.

3 Q. Okay. And since they were transferred to a debtor  
4 that is now in bankruptcy, I think it's pretty safe to say  
5 those efforts were unsuccessful?

6 A. Well, I think it's safe to say that those efforts  
7 were unsuccessful. But that the --

8 Q. Thank you. That was my question.

9 A. All right.

10 Q. Other than that broad outline, are there any  
11 specifics about what the debtors are going to be doing?

12 A. No.

13 Q. Did you have any involvement with the decision to  
14 put these properties into the debtor?

15 A. I did not.

16 Q. Okay. Did anyone at Prime have involvement with  
17 that?

18 A. Well, I'm sure there were those at Prime that had  
19 involvement with that.

20 Q. Okay. And have you had discussions with anyone at  
21 Prime about why these properties were put into bankruptcy, or  
22 put into this debtor?

23 A. No. I have not.

24 MR. STABER: I'll pass the witness, Your  
25 Honor.

1 THE COURT: Very well. Thank you.

2 Anyone else?

3 Mr. Kinvig.

4 CROSS-EXAMINATION

5 BY MR. KINVIG:

6 Q. Just a few brief questions, Mr. Crown. My name is  
7 Cameron Kinvig. I represent American Bank of Commerce.

8 And I thought that I would go over a couple of  
9 questions that you were asked and you answered at the 341  
10 Meeting.

11 Do you remember being at the 341 Meeting?

12 A. I do.

13 Q. Talking about your preparation of the schedules and  
14 the debtor's SOFA, when you were preparing those, did you  
15 come up with the sale numbers kind of out of whole cloth, or  
16 the valuation numbers, I apologize, or were those given to  
17 you?

18 A. Those were given to me.

19 Q. And who gave those to you?

20 A. Those were the values as per the transfers of those  
21 assets to the -- to FRE.

22 Q. But what entity or what person gave you those  
23 numbers?

24 A. I believe I was given those numbers in a schedule.  
25 The schedule was handed to me by John Daugherty with Prime.

1 Q. Okay. So you were just told what numbers to put  
2 in, essentially?

3 A. Yes. I was told that these were the numbers upon  
4 which this -- the numbers that were utilized in the transfer  
5 documents, correct.

6 Q. And did you do any independent due diligence based  
7 on those numbers? Did you question them at all?

8 A. No, I did not.

9 Q. Did you look at any appraisals that were performed  
10 by third parties in order to value those properties before  
11 you put them down on the schedules?

12 A. I did not, no. I know other's did. But I did not.

13 MR. KINVIG: No further questions, Your Honor.

14 Thank you.

15 THE COURT: Thank you.

16 Mr. Warner? No. Mr. Leninger.

17 CROSS-EXAMINATION

18 BY MR. LENINGER:

19 Q. Mr. Crown, in your capacity with Prime Asset, were  
20 you an advisor for TCI prior to the transfers?

21 A. Yes. That's one of the rules that Prime has.

22 Q. But were you specifically?

23 A. Yes.

24 Q. Okay. And did you advise TCI with respect to the  
25 Kenwest property?